

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
)	
<u>Westerhof et al.</u>)	
)	
Serial No.: 10/587,341)	Group Art Unit: 3724
)	
Filed: July 25, 2006)	Examiner: Clark F. Dexter
)	
For: SAFETY RAZOR APPARATUS)	
HAVING A PIVOTAL GRIP)	Board of Patent Appeals and
PORTION)	Interferences
)	
)	
)	
Confirmation No.: 6613)	
)	

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed on December 17, 2008 and the Notification of Non-Compliant Appeal Brief mailed on July 1, 2009, and pursuant to 37 C.F.R. § 41.37, Appellants present this appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1-6 in the Final Office Action dated September 25, 2008 and the objection of claims 7-8 in the Advisory Action dated December 8, 2008. The appealed claims are set forth in the attached Claims Appendix.

1. Real Party in Interest

This application is assigned to Koninklijke Philips Electronics N.V., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences that would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-8 have been rejected in the Final Office Action. The Examiner withdrew the rejection of claims 7-8 in the Advisory Action. Claims 7-8 have been objected to in the Advisory Action. Claim 9 was previously cancelled. The final rejection of claims 1-6 is being appealed.

4. Status of Amendments

All amendments submitted by Appellants have been entered.

5. Summary of Claimed Subject Matter

The present invention, as recited in independent claim 1, is directed to a safety razor apparatus having a blade assembly comprising two guiding members each having a surface for abutting against the skin. (See Specification, p. 1, ll. 1-2, 12-13, 16-17, p. 2, ll. 2, 7, p. 3, ll. 22-23). The safety razor further comprising one or more blades located between said two guiding members. (See Specification, p. 1, ll. 2-3, p. 3, ll. 23-24). Wherein a cutting edge of each blade and said surfaces are positioned substantially in one plane. (See Specification, p. 1, ll. 3-4, p. 3, ll. 24-25, p. 4, ll. 16-18, 29). The apparatus has a grip portion being pivotal relative to said blade assembly about a pivot axis. (See Specification, p. 1, ll. 4-5, 26-28, p. 2, l. 23, p. 3, ll. 5-10, 25-26, p. 4, ll. 6-11 21-22, Fig. 1, Fig. 2). Wherein the pivot axis is positioned parallel to said cutting edge of each blade the pivot axis being adjustable to different locations on the blade assembly. (See Specification, p. 1, ll. 5-7, p. 2, ll. 20-34, p. 3, ll. 1-4, 26-28, p. 4, ll. 26-34 26-28, Fig. 2-3).

6. Grounds of Rejection to be Reviewed on Appeal

I. Whether claims 1-6 are unpatentable under 35 U.S.C. § 102(b) over U.S. Patent No. 1,010,704 to Story (hereinafter “Story”).

II. Whether claims 1-6 are unpatentable under 35 U.S.C. § 103(a) as being an obvious modification of Story.

7. Argument

I. The Rejection of Claims 1-6 Under 35 U.S.C. § 102(b) Over Story Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected claims 1-6 under 35 U.S.C. § 102(b) as being unpatentable over Story. (See 09/25/08 Office Action, p. 3).

Story describes “a safety razor in which a substantially flat blade is clamped between a blade rest formed as a runner to bear and move upon the face, and a guard plate having guard fingers which cooperate with the cutting edge or edges of the blade ... a handle being provided which is adjustable relative to the blade and its holder and is capable of being locked in various positions.” (See Story, p. 1, col. 1, ll. 8-17). The guard plate is formed to bear on the inner side of the blade. (See Story, p.1, col. 2, ll. 83-84). The clamp is removable from the shank 13 to release the blade and guard plate. (See Story, p. 2, col. 1, ll. 5-7). Story teaches that the handle may be adjusted “at any desired angle relatively to the cutting edge or edges of the blade.” (See Story, p. 2, col. 1, ll. 61-64).

B. The Cited Patent Does Not Disclose The Pivot Axis Being Adjustable To Different Locations On The Blade Assembly, As Recited In Claim 1.

Claim 1 recites, “the pivot axis being adjustable to different locations on the blade assembly.” The Examiner asserts that the above recitation of claim 1 is taught in Story. (See 09/25/08 Office Action p. 3). Appellants respectfully disagree.

The Examiner specifically states that the above limitation of claim 1 is taught by Story “by moving threaded member 13 with respect to 20 through varying degrees of tightness such as by rotating 13 with respect to 20 180 degrees in either direction; or by moving/adjusting the handle to adjust the pivot axis to different locations shown in Fig. 2.” (See 09/25/08 Office Action p. 3). This is incorrect. Claim 1 specifically recites, “the pivot axis being adjustable to different locations on the blade assembly.”

Threaded member 13 represents a screw-threaded shank which is rigidly attached to the blade rest 12. (See Story, col. 1, ll. 51-52). A clamp 20 bears on the outer side of the guard plate and has a central screw-threaded socket 21 engaged with the threaded member 13, so that when the clamp 20 is rotated on the threaded member 13 it acts as a nut. (See Story, col. 2, ll. 100-105). Threaded member 13 and clamp 20 in Story merely provide a method for connecting the blade with the handle. The Examiner equates rotating the threaded member 13 180 degrees to “the pivot axis being adjustable to different locations on the blade assembly.” However, mere rotation of the threaded member does not adjust a pivot axis “to different locations on the blade assembly.” In addition, mere rotation of the threaded member does not generate “different locations on the blade assembly,” as recited in claim 1.

The handle, from Story, is maintained at a fixed point on the blade. For example, in figure 2, the grip portion attaches to the blade portion at point 13. Story cannot adjust the point at which the grip portion attaches to the blade portion. Therefore, Story cannot be “adjustable to different locations on the blade assembly,” as recited in claim 1. Because claims 2-6 depend from, and therefore include all the limitations of claim 1, it is respectfully

submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

II. The Rejection of Claims 1-6 Under 35 U.S.C. § 103(a)
 Over Story Should Be Reversed.

A. The Examiner's Rejection

In the Final Office Action, the Examiner rejected claims 1-6 under 35 U.S.C. § 103(a) as being an obvious modification Story. (See 09/25/08 Office Action, p. 3-4).

B. The Cited Patent Does Not Disclose The Pivot Axis Being Adjustable To Different Locations On The Blade Assembly, As Recited In Claim 5. And It Is Not An Obvious Modification.

The Examiner asserts that, “in the alternative, if it is argued that there is no disclosure of such a function, it would have been obvious to one having ordinary skill in the art to make the invention.” (See 09/25/08 Office Action p. 3). Appellants respectfully disagree. The Examiner has provided no basis for this assertion. To make the pivot axis between the grip portion and the blade portion of Story adjustable to a different location on the blade portion would require a radical redesign of the entire safety razor in Story. Nothing in the disclosure or the picture suggests a modification of this type, nor is there any anticipation of this feature. Therefore, Appellants respectfully submit that it would not have been obvious to one having ordinary skill to modify story to include the above limitation of claim 1. Thus, Appellants submit that claim 1 is patentable over Story. Because claims 2-6 depend from, and therefore include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the same reasons given above with respect to claim 1.

Conclusion

For the reasons set forth above, Appellants respectfully request that the Board reverse the rejection of the claims by the Examiner under 35 U.S.C. § 102(b) and 103(a), and indicate that claims 1-8 are allowable.

Respectfully submitted,

Date: July **22**, 2009

By: 

Michael Marcin (Reg. No. 48,198)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, NY 10038
Tel: (212) 619-6000
Fax: (212) 619-0276

CLAIMS APPENDIX

1. (Previously Presented) A safety razor apparatus having a blade assembly comprising two guiding members each having a surface for abutting against the skin, and one or more blades located between said two guiding members wherein a cutting edge of each blade and said surfaces are positioned substantially in one plane, and the apparatus has a grip portion being pivotal relative to said blade assembly about a pivot axis wherein the pivot axis is positioned parallel to said cutting edge of each blade, the pivot axis being adjustable to different locations on the blade assembly.
2. (Previously Presented) A safety razor apparatus as claimed in claim 1, characterized in that the pivot axis can be fixed in two or more locations on the blade assembly.
3. (Previously Presented) A safety razor apparatus as claimed in claim 1, characterized in that said pivot axis can be fixed at different locations in a plane parallel to said one plane.
4. (Previously Presented) A safety razor apparatus as claimed in claim 1, characterized in that the blade assembly can hinge around a pin, the pin forming the pivot axis, which pin is attached to said grip portion wherein the blade assembly is provided with means for engaging said pin.
5. (Previously Presented) A safety razor apparatus as claimed in claim 4, characterized in that said means for engaging said pin comprise a number of recesses at different locations for accommodating said pin at such different locations.
6. (Previously Presented) A safety razor apparatus as claimed in claim 4, characterized in that said means for engaging said pin comprise clamping means for holding said pin in a recess.
7. (Previously Presented) A safety razor apparatus as claimed in claim 6, characterized in that said clamping means enable displacement of the pin from a recess to another recess when a predetermined force is being exerted.

8. (Previously Presented) A safety razor apparatus as claimed in claim 4, characterized in that said pin is positioned between a first engaging member provided with a number of recesses and a second engaging member having a surface facing said first engaging member, wherein said second engaging member pushes said pin towards said first engaging member.

9. (Cancelled)

EVIDENCE APPENDIX

No evidence has been entered or relied upon in the present appeal.

RELATED PROCEEDING APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings related thereto.